

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 February 2021

**Public Authority:** The Governing Body of Birmingham Metropolitan College

**Address:** Jennens Road  
Birmingham  
B4 7PS

### Decision (including any steps ordered)

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1. The complainant has requested information from Birmingham Metropolitan College ("the College") on payments made to external management and training companies within a specified time period. The College stated it could not comply with the request without exceeding the appropriate cost limit under section 12 of the FOIA.
2. The Commissioner's decision is that the College correctly refused to comply with the request under section 12 of the FOIA. She also finds the College has complied with its obligations under section 16 of the FOIA and no steps are required.

### Request and response

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3. On 24 February 2020 the complainant made a request to the College in the following terms:  
*"Can you please provide the original information requested from January 1<sup>st</sup> 2019 to date?"*
4. This followed a previous request for:  
*"1. From 1<sup>st</sup> January 2016 to date please provide the names and amounts paid by Bmet College to all external management consultancy/training individuals and companies;"*

*2. If unable to provide the detail requested above please provide the total spending figure for these individuals and companies for the above time period."*

5. The College responded on 17 March 2020 confirming that it did hold the requested information but it would be unable to comply with the request without it exceeding the appropriate limit as it had estimated it would exceed three days to comply.
6. The complainant requested an internal review on 17 March 2020. The complainant raised concerns about the time estimate provided – asking how the College could state the information was held if it had not looked for it. The complainant also raised concerns the response indicated the information may only be held on a paper-based system.
7. The College conducted an internal review and responded on 14 April 2020. The College explained its payments are recorded in an electronic payment system but that the information is not held in a way that allows for easily extracting the requested information.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 16 April 2020 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of her investigation to be to determine if the College has correctly refused the request on the basis of section 12 of the FOIA i.e. that to comply with the request would exceed the appropriate cost limit.

### **Reasons for decision**

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#### **Section 12 – cost exceeds the appropriate limit**

10. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to comply with the request in its entirety.
11. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the College.

12. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - Determining whether it holds the information;
  - Locating the information, or a document which may contain the information;
  - Retrieving the information, or a document which may contain the information; and
  - Extracting the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

*Would the cost of compliance exceed the appropriate limit?*

14. As is the practice in a case such as this, the Commissioner asked the College to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
15. The College explained that in order to respond to the request it sought advice from its Finance Director. The process required to obtain the requested information would involve the interrogation of two systems – a legacy system holding the data within the request from January 2019 to August 2019 and the current finance system holding the data from August 2019 to the date of the request.
16. The College explained that the process with regard to the legacy system would involve a member of the team manually checking each item, record or row within the database. Then within that record the detail of the payment would need to be checked to ascertain whether the record was a payment to a management consultant or training organisation or individual. The College further explained that it cannot view the paper counterparts to the payments on the legacy system and to reveal the necessary detail to assess if the payment is relevant to the scope of the request this would be need to be checked. The College stated some of these records are now in the College archives and would need to be retrieved from the central archiving rooms as they are not accessible in the office.
17. The College has also explained that, in relation to records held in the legacy system, there is only one member of staff currently trained to

use the system in the Accounts team, adding another layer of difficulty and timeliness to complying with the request.

18. Turning to the current finance system; the College explained a similar process would be followed in that a member of the team would need to manually select each item, record or row within the database then, within that record, would need to check the detail of the payment to ascertain whether the record related to an activity associated with management consultancy or training companies.
19. The College has explained that the paper records in the current system are stored as a scanned image within the system meaning that no paper counterparts would need to be found. The College acknowledges that this would reduce the time to identify a relevant payment in the current system but asserts that it would still take a significant amount of time to check each record.
20. The College states that as there are differences in each system and little conformity between how a relevant payment could be identified within each system, it makes the process more difficult. In estimating how much time it would take to locate and extract the requested information the College asked experienced users to provide their input. The College was able to conclude that an experienced user could assess, where there were no complications with the records i.e. no details needed to be retrieved from outside the system, a maximum of three records in a minute.
21. On average there are approximately 320 records a month that would require review and therefore the 12 month period would cover approximately 3,840 records. The College therefore estimated this would take just over 21 hours to retrieve the information requested accurately, based on a situation where there were no complications or reasons to interrogate the data further.
22. The College has informed the Commissioner this is the quickest and only method of finding the level of detail requested and it considers the estimate to be quite conservative.

*The Commissioner's view*

23. The Commissioner's view is that section 12 of the FOIA is engaged.
24. Section 12 of the FOIA does not require a public interest test. Whether or not the exemption is engaged is not affected by how records should or could be held. The Commissioner is only concerned with the way that information is, as a matter of fact, held.

25. In this particular case the Commissioner accepts the College's assertions about how the information is held. It is reasonable that each record, once identified would need to be interrogated to establish if it relates to payments to external management or training companies. Clearly this process is quicker in the current system used by the College as scanned paper records are available so an estimate of assessing 3 records per minute seems reasonable. Accepting that this is the case then the Commissioner must also accept that the cost limit would be exceeded by complying with the request and that is before even considering the additional time and difficulties of interrogating the records in the legacy system.
26. The Commissioner is therefore satisfied that section 12 of the FOIA is engaged and therefore the College is entitled to refuse the request.

**Section 16(1) – the duty to provide advice and assistance**

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice in providing advice and assistance, it will have complied with section 16(1).
28. The College has offered to assist the complainant in refining their request. Whilst the College accepts it did not specifically give the complainant directions as to how the request could be refined it did offer to discuss the options with the complainant in an attempt to resolve this complaint and subsequent other complaints in as efficient and effective a way as possible.
29. The Commissioner is therefore satisfied that the College did attempt to offer advice and assistance to the complainant and therefore has complied with section 16(1) of the FOIA.

## Right of appeal

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30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**